

REX TAXICAB CO., INC, PETITIONER, VS. JOSE BAUTISTA, AS GUARDIAN AD UTEM OF THE MINOR NARCISA BAUTISTA, AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-15392. September 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition to review, on certiorari the decision of the Court of Appeals (in CA-G. R. No. 11129-R) affirming the judgment of the Court of First Instance of Manila (in Civil Case No. 16308), awarding to respondent Jose Bautista (as guardian ad Utem of the minor Narcisa Bautista) the amounts of P1,075.00 as actual or compensatory damages, and P1,500.00 as moral damages, with costs.

It appears that at about 4:00 o'clock in the morning of February 13, 1952, Narcisa Bautista, a minor then about 6 years of age, her aunt Pelagia Bautista, a sister, and two boys and another girl, boarded at Taft Avenue, Manila in the neighborhood of their home at 1183 Int., Agno St., Malate, a taxicab bearing Plate No. 1401, belonging to petitioner Rex Taxicab Co., Inc., driven by its driver, Mario Miranda. Said taxicab was a Ford, 1947 model, Sedan type, and had been used by petitioner in its business continuously for the preceding 5 years. Narcisa seated herself at the back seat near the left rear door, and next to her in the center was her aunt Pelagia. As soon as all said passengers were seated in the taxicab, Pelagia told its driver to take them to the Tutuban Railroad Station, where they intended to board a train bound for San Carlos, Pangasinan. While the taxicab was running northward along the east lane of Taft Avenue in front of the City Hall, Narcisa felt the necessity to spit. She asked permission from her aunt, and the latter having consented, she stood up, placed her arms, which were crossed, on the sill of the window of the left rear door of the taxicab and leaned thereon to spit. All of a sudden, said door opened, and Narcisa fell on the pavement outside. She was immediately taken to the Phillippine General Hospital and, upon medical examination, it was found that she sustained fractures of several bones in the head, particularly, in the parieto-occipital region, and several wounds and bruises in other parts of her body. She was admitted in said hospital on the same day, and was discharged therefrom on February 18, 1952. She, however, continued to receive medical attendance thereafter. For her hospitalization, doctor's bills, medicine, and other incidental expenses, her parents spent the sum of P790.00.

Petitioner Rex Taxicab Co., in this instance, claims that the driver of the taxicab in question was not guilty of negligence, and that the fall of the girl was due to pure accident if not to her own act of leaning against the door thereby accidentally touching the lever which caused its opening. The Court of Appeals, however, rejected this theory and expressly accepted the finding of the lower court that the driver was negligent. This is a factual finding binding on this Court and which we are not authorized to review.

Petitioner next contends that the Court of Appeals erred in awarding moral damages to respondent Bautista.

The contention is meritorious. This Court has repeatedly held (*Caehero vs. Manila Yellow Taxicab, Ind.*, 101 Phil., 523; 54 Off. Gaz. [26] 6599; *Necesito vs. Paras, et al.*, 104 Phil., 75; 56 Off. Gaz. [23] 4023; *Fores vs.*

Miranda, 105 Phil., 266; 57 Off. Gaz. [44] 7938; Tamayo vs. Aguino, et al., 105 Phil., 949; 56 Off. Gaz. [36] 5617)[1] that moral damages are not recoverable in damage action, predicated on a breach of the contract of transportation, as in the instant case, in view of the provisions of Articles 2219 and 2220 of the new Civil Code. The exceptions-according to the Fores case, supra (which we here re-affirm), are (1) where the mishap results in the death of a passenger, and (2) where it is proved that the carrier was guilty of fraud or bad faith, even if death does not result.

"The exception to the basic rule of damages now under consideration is a mishap resulting in the death of a passenger, in which case Article 1764 makes the common carrier expressly subject to the rule of Art. 2200, that entitles the spouse, descendants and ascendants of the deceased passenger to 'demand moral damages for mental anguish by reason of the death of the deceased' (Necesito vs. Paras, 104 Phil., 75; 56 Off. Gaz. [23J 4023, Resolution on motion to reconsider, September 11, 1958). But the exceptional rule of Art. 1765 makes it all the more evident that where the injured passenger does not die, moral damages are not recoverable unless it is proved that carrier was guilty of malice or bad faith. We think it is clear that the mere carelessness of the carrier's driver does not per se constitute or justify an inference of malice or bad faith on the part of the carrier; and in the case at bar there is no other evidence of such malice to support the award of moral damages by the Court of Appeals. To award moral damages for breach of contract, therefore, without proof of bad faith or malice on the part of the defendant as required by Art. 2220, would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation." (Fores vs. Miranda, supra.)

It does not appear in the case before us that the victim of the mishap, Narcisa Bautista, died as a result thereof. Neither has it been shown that petitioner has acted with malice or "bad faith in connection with said mishap. The mere carelessness of its driver, according to the Fores case, supra, "does not per se constitute or justify an inference of malice or bad faith" on its part. Consequently, the award of the moral damages in question in the amount of P1 ,500.00 to respondent was improper.

Petitioner lastly argues that the Court of Appeals erred in awarding attorney's fees to respondent Bautista. It is urged that since the instant case does not come under any of the instances mentioned in Article 2208 of the new Civil Code wherein attorney's fees are recoverable, the award of attorney's fees in question to respondent was improper.

Pertinent portion of the decision of the Court of Appeals, reads:

"The amount awarded for compensatory damages evidently included all the compensatory damages, including attorney's fees, to which the trial court believed the appellee is entitled, for the disbursements made by Jose Bautista father of the appellee/ for the injuries suffered by the latter only amounted to P790.00 * * *."

From this, it seems that the Court of Appeals, after finding that the actual or compensatory damages to which respondent Bautista was entitled are only P790.00, it being the total disbursements made by him in connection with the injuries suffered by the minor Narcisa Bautista, considered the difference between the sum of P1,075.00 awarded the Court of First Instance and P790.00, or P285.00 as attorney's fees, to which, respondent is justly and equitably entitled (Article 2208 [11], new Civil Code). Under the circumstances of the case, we are not prepared to declare that the Court of Appeals erred in this regard.

Wherefore, the appealed decision is modified, by eliminating therein the sum of P1,500.00 as moral damages awarded by the Court of Appeals to respondent Bautista., Said decision is, in all other respects, affirmed without pronouncement as to costs. So ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, Gutierrez David, Paredes, and Dizon, JJ., concur.

[1] See also *Verzosa vs. Baytan, et al.*, 107 Phil., 1010.

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